

**RULES  
OF  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES**

**CHAPTER 0940-5-2  
MENTAL HEALTH FACILITIES**

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**0940-5-2-.01 STATEMENT OF AUTHORITY.** The Department of Mental Health and Mental Retardation is authorized to license facilities operated for the provision of mental health, mental retardation, or alcohol and drug abuse services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 5.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Amendment filed March 11, 1987; effective April, 25, 1987. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.02 UNLAWFUL OPERATION.** No facility may begin delivering services until the Department's Office of Licensure issues a license. Providing mental health, mental retardation, or alcohol drug abuse services without a license is unlawful and will result in civil and/or criminal sanctions pursuant to T.C.A. §§33-2-505 and 33-2-508.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Repeal and new rule filed June 30, 1986; effective July 30, 1986. Amendment filed October 14, 1986; effective November 28, 1986. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.03 APPLICATION FORM.** The application for a license is to be made on a form prepared and supplied to the applicant by the Department's Office of Licensure. Each applicant for a license must submit in writing in legible ink or by typewriter the information requested on the application. The application will request the information needed by the Department's Office of Licensure to fulfill its statutory obligation under T.C.A. §33-2-506 to determine responsible and reputable character of the applicant and the ability of the applicant to meet the minimum standards for the operation of a facility. The application information to be requested by and supplied to the Department's Office of Licensure is as follows:

- (1) (a) The name, address, and other background and identifying information of the licensee;
- (b) The name, address, and other background and identifying information of the person or persons responsible for the operation of the facility or facilities to be licensed;
- (c) A description of the location, design, and type of facility or facilities to be licensed;

(Rule 0940-5-2-.03, continued)

- (d) If requested, personal references; and
- (e) The signature of the licensee applicant, or of the person charged by the licensee applicant, for certifying the correctness and completeness of the application, and for ensuring compliance with the licensure rules.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 22, 1979; effective July 10, 1979. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

#### **0940-5-2-.04 APPLICATION FEES.**

The applicant must submit a fee or fees for the processing of the application by the Department's Office of Licensure in making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fee or fees. All fees submitted are non refundable. The fee rate is based on the number of distinct categories of services and or facilities (as defined under Chapter 0940-5-1 Definitions, amended under Chapter 947, Public Acts of 2000, codified at Tenn. Code Ann. § 33-2-402, effective March 1, 2001) to be operated at each non-residential site, and on the number of client beds to be licensed at each residential site. A fee must be submitted for each facility at each site for which licensure is being sought under the following schedule:

(1) Non-Residential Services and/or Facility Fees:

One (1) Distinct Category of Services or Facility	\$ 810.00
Two (2) Distinct Categories of Services and/or Facilities	1,010.00
Three (3) Distinct Categories of Services and/or Facilities	1,220.00
Four (4) Distinct Categories of Services and/or Facilities	1,420.00
More than four (4) Distinct Categories of Services and/or Facilities	1,620.00

(2) Residential Facility Fees:

Two to Three (2-3) Beds	\$ 200.00
Four to Ten (4-10) Beds	280.00
Eleven to Fifteen (11-15) Beds	410.00
Sixteen to Fifty (16-50) Beds	810.00
More than Fifty (50) Beds	1,220.00

(3) Mental Health Hospitals and Developmental Disabilities  
Institutional Facilities

\$ 175.00 per bed

**Authority:** T.C.A. §§4-4-103 and 33-2-404 & 406(h). **Administrative History:** Original rule filed May 22, 1979; effective July 10, 1979. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Amendment February 12, 1992; effective March 28, 1992. Amendment filed March 19, 1992; effective May 3, 1992. Amendment filed October 3, 2002; effective December 17, 2002.

#### **0940-5-2-.05 APPLICATION FOR AN INITIAL LICENSE.**

- (1) The applicant must submit an application on a form prepared by the Department's Office of Licensure.
- (2) The applicant must submit the required fee or fees for application processing.
- (3) Upon receipt of the completed application and the required fee or fees, the Department's Office of Licensure will arrange for needed inspections of the proposed site or sites.

(Rule 0940-5-2-.05, continued)

- (4) The Department's Office of Licensure will review the application, make any necessary further investigations, review the results of the inspections of the proposed site or sites, and take one (1) of the following actions:
  - (a) If the review indicates substantial compliance with all requirements for an initial license, the license will be issued;
  - (b) If the review indicates that corrections are needed, the applicant will be notified that the corrections must be made before a license is issued; or
  - (c) If the review indicates that a license should not be granted, the applicant will be so notified. Within thirty (30) days of such notification of denial, the applicant may file a written request for a hearing on the denial.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

#### **0940-5-2-.06 APPLICATION FOR LICENSE RENEWAL.**

- (1) Prior to the expiration of a current license, the Department's Office of Licensure will notify the licensee of the need to apply for license renewal and will advise the licensee of the information, fee or fees, and the documents needed to process the renewal application.
- (2) The Department's Office of Licensure may conduct or arrange for inspections of the facility's current life safety and environmental conditions, and may review the facility's program performance history.
- (3) Upon receipt of the application material and the required fee or fees, the Department's Office of Licensure will review the application material, the current life safety and environmental conditions, and the performance history of the facility or facilities.
- (4) Following the above review, the Department's Office of Licensure will take one of the following actions:
  - (a) If the Department's Office of Licensure determines that all facilities operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;
  - (b) If the Department's Office of Licensure determines that all facilities operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or facilities not in full compliance; or
  - (c) If the Department's Office of Licensure determines that a license should not be issued to one or more facilities operated by the licensee, the application will be denied in whole or in part and the licensee so notified. Within thirty (30) days of such notification of denial, the licensee may file a written request for a hearing on the denial.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.07 DISTINCT FACILITY CATEGORIES.** The licensure rules identify and define distinct categories of facilities under Chapter 0940-5-1 DEFINITIONS of this division of rules. These categories of facilities must meet the differing life safety, environmental, and minimum program rules as set forth under Chapter 0940-5-3 APPLICATION OF RULES TO DISTINCT FACILITY CATEGORIES. These differing rules are based on the needs of the clients being served and upon the nature of the facility's services. The provider of mental health, mental retardation, or alcohol and drug abuse services must hold a license which authorizes the delivery of distinct categories

(Rule 0940-5-2-.07, continued)

of facility services. Authorization by the Department to deliver such services will be based on the provider's compliance with the applicable rules.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed March 11, 1987; effective April 25, 1987. Repeal and new rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.08 NUMBER OF LICENSES REQUIRED.** Each licensee will be issued one license for each site at which the licensee is operating a facility or facilities. The license for each site will indicate what category or categories of facilities are authorized to be operated at that site. However, when a licensee operates more than one facility at a single site, two licenses may be issued if one or more facilities at the site require a provisional license, and one or more are eligible for a full license.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.09 NONTRANSFERABILITY OF LICENSES.** Licenses are not transferable or assignable. A new application must be made and a new license issued before services are provided when there is a change in the ownership or the location of a facility.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.10 TYPES AND CONDITIONS OF LICENSES.**

- (1) Initial License. An initial license is issued only to newly established facilities to allow the licensee opportunity to implement and to demonstrate compliance with the minimum program requirements and to allow the Department's Office of Licensure an opportunity to evaluate the facility's compliance performance. Generally, initial licenses will be issued for a period of less than twelve (12) months. Issuance of an initial license is based on the following:
  - (a) Submission of a completed and approved application and fee or fees;
  - (b) Approval of the facility's life safety and environmental conditions by the Department's Office of Licensure; and
  - (c) A written commitment from the applicant to meet the applicable, minimum program requirements.
- (2) Full License. A full license is issued to facilities based on the following:
  - (a) Submission of a completed and approved application and fee or fees; and
  - (b) Demonstration of compliance with the licensure law and applicable rules as determined by the Department.
- (3) Provisional License. A provisional license is issued to a facility when a facility does not meet all the requirements for a full license. The Department's Office of Licensure may grant a provisional license if all of the conditions below are satisfied:
  - (a) Submission of a completed and approved application and fee or fees;
  - (b) The facility is making a diligent effort to comply with the licensure law and rules;  
  
"A diligent effort to comply with rules" is determined by past performance of the facility in meeting rules and correcting deficiencies within reasonable time periods. These commitments must be made in the form of a Plan of Compliance which details actions to be taken to correct deficiencies and deadlines by which the corrections will be made. The Department will determine

(Rule 0940-5-2-.10, continued)

if the plan is acceptable based on the seriousness of the deficiencies and past performance of the facility.

A facility operating under a provisional license must correct the deficiencies which were the basis for the provisional license within the time frame agreed to by the department.

- (c) The continued operation of the facility will not endanger the health or safety of its clients;
- (d) The continued operation of the facility is necessary because care is not otherwise reasonably available for its clients;
- (e) The facility has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; and
- (f) The facility has substantially met the commitments made in the preceding year's compliance plan, if any.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.11 TIME LIMITS.** Upon inspection of any facility making application for or holding a license, the Department's Office of Licensure may allow a reasonable time period for such facility to correct deficiencies found by inspection.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.12 DEEMED COMPLIANCE.**

- (1) A facility which provides services which are accredited or certified under any of the following may be deemed by the Department's Office of Licensure to be in compliance with the applicable licensure rules:
  - (a) Joint Commission on Accreditation of Health Care Organizations (JCAHO);
  - (b) Council on Accreditation of Rehabilitation Facilities (CARF);
  - (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) only; or
  - (d) Accreditation Council on Services for People with Developmental Disabilities, Inc. (AC-DD).
- (2) To be considered for a deemed compliance determination, the licensee must submit written and official evidence of certification or accreditation to the Department's Office of Licensure. Such evidence must show the findings of the recognized certifying or accrediting body, including any cited deficiencies with plans of correction.
- (3) Facilities providing accredited or certified services must demonstrate compliance with the life safety and environmental rules. The accredited or certified status of services offered by a facility does not alter the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. §33-2-509 or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility. Notwithstanding the accreditation or certification of a facility's services, such a facility is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. §33-2-507 and the rules of this chapter.
- (4) Pursuant to T.C.A. §33-2-512, a facility which can demonstrate compliance with regulations and standards by previously acquired license from another state agency is considered in compliance with

(Rule 0940-5-2-.12, continued)

rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.13 ACCESS TO FACILITIES AND INFORMATION.** Representatives of the Department's Office of Licensure shall have the right to enter upon or into the premises of any facility providing mental health, mental retardation or alcohol and drug abuse services at all reasonable times in order to make inspections it deems necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests to give consent to allow the department to obtain information from third parties and to review client and financial records of the facility.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.14 GROUNDS FOR DENIAL, REVOCATION OR SUSPENSION.**

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend or revoke a license on any of the following grounds:
  - (a) Violation of licensure law or rules;
  - (b) Permitting, aiding or abetting the commission of any illegal act in a licensed facility;
  - (c) Conduct or practice detrimental to the welfare of the clients of a licensed facility;
  - (d) The submission of false information; or
  - (e) The use of subterfuge (for instance, filing through a second party after an individual has been denied a license).
- (2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, T.C.A. Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility presents an immediate threat to the health, safety, and welfare of the facility's clients. When a summary suspension occurs, proceedings for revocation or other action against the licensee should be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.15 EXPIRATION OF LICENSES.** The expiration date of all licenses issued by the Department's Office of Licensure will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license, (including payment of the required fee or fees) the existing license does not expire until the application has been determined by the Department's Office of Licensure. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the Department's order or a later date fixed by order of the reviewing court.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.16 POSTING OF THE LICENSE.** The certificate of license must be posted within the facility site for public view.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

(Rule 0940-5-2-.21, continued)

**0940-5-2-.17 SURRENDER REQUIREMENT.** The certificate of license must be surrendered to the Department's Office of Licensure upon revocation or suspension of the license, upon transfer of ownership of the facility, or when the facility otherwise ceases to operate.

*Authority:* T.C.A. §33-2-504. *Administrative History:* Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.18 EXCLUSIONS FROM LICENSURE.**

- (1) The following facilities are excluded from the licensure jurisdiction of the Department of Mental Health and Mental Retardation:
  - (a) A facility which is appropriately licensed by the Department of Public Health as a "general medical surgical hospital," "nursing home," "recuperation center," "institutional home for the aged," "residential home for the aged," or "home health agency" as defined in T.C.A. §68-11-201 and Rules and Regulations of the Department of Public Health;
  - (b) A facility which is operated by the Department of Education or the Department of Correction which affirmatively states that the primary purpose of the facility is other than the provision of mental health or mental retardation services.

*Authority:* T.C.A. §33-2-504. *Administrative History:* (Formerly numbered as 0940-5-1-.05. For history prior to July, 1988 see pages 1.001 through 1.003). Amendment filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.19 WAIVER AUTHORITY.** The Department's Office of Licensure may waive any rule determined to be irrelevant or to pose a hardship to a particular facility. A hardship waiver may be only granted when strict enforcement of a particular requirement would not be in the best interest of the facility's clients. All hardship waivers will be reviewed upon each application to renew the facility's license. All waivers granted will be made in writing and entered in the Department's official record of the facility. This written document shall include the justification for the waiver.

*Authority:* T.C.A. §33-2-504. *Administrative History:* Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.20 INVESTIGATION OF REPORTED ABUSES IN OPERATION OF FACILITY.**

- (1) The Department will investigate serious reports of abuse, dereliction, or deficiency in the operation of a licensed facility in accordance with T.C.A. §33-2-512.
- (2) The licensee must report to the Department any serious allegations of abuse, dereliction, or deficiency in the operation of the facility.

*Authority:* T.C.A. §33-2-504. *Administrative History:* Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.21 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.**

- (1) The Department will give a written Notice of Non-Compliance to the licensee when an inspection or investigation of a facility reveals non-compliance with licensure law or rules.
- (2) If requested by the Department, the licensee must submit in a timely manner a written Plan of Compliance in response to a Notice of Non-Compliance.
- (3) The licensee's written Plan of Compliance must include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed. The Plan of Compliance must contain the signature of the person responsible for the operation of the facility.

(Rule 0940-5-2-.21, continued)

- (4) The Notice of Non-Compliance and the licensee's Plan of Compliance will be written on a form provided by the Department's Office of Licensure.
- (5) The Department will notify the licensee in writing whether or not the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, the department will institute sanctions against the license.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.22 UNANNOUNCED INSPECTION.** The Department's Office of Licensure shall make at least one (1) unannounced inspection of each licensed facility yearly in accordance with the requirement of T.C.A. §33-2-509(a).

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.23 REASONABLE NOTICE INSPECTION.** Upon giving reasonable notice, the Department's Office of Licensure may enter and inspect any facility making application for or holding a license. Such inspections may include the review of physical plant, program, activities, and facility records. Such inspections are authorized by T.C.A. §33-2-509(b).

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.24 INSPECTION FEES.** The Department's Office of Licensure is granted the authority to charge a fee in an amount not to exceed fifty dollars (\$50) for making inspections pursuant to T.C.A. §33-2-509(b). When an inspection is made of a licensed facility in accordance with rule 0940-5-2-.22 UNANNOUNCED INSPECTION, and rule 0940-5-2-.23 REASONABLE NOTICE INSPECTION, and such inspection finds substantial non-compliance with the licensure rules, the Department's Office of Licensure may be required to re-inspect the facility to determine if the licensee has met the terms of a Plan of Compliance for such citations. Under such circumstances, the licensee is required to submit an inspection fee to the Office of Licensure in the amount of fifty dollars (\$50) pursuant to the re-inspection.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.

**0940-5-2-.25 ASSISTANCE TO CLIENTS WHEN A LICENSE IS DENIED, SUSPENDED, OR REVOKED.** Whenever it appears that clients of a facility will require assistance in continuing to receive needed services because the facility's license is to be denied, suspended, or revoked, the Office of Licensure will notify state and local agencies which may be able to provide assistance to clients and will coordinate the efforts of the Department and other agencies in providing assistance.

**Authority:** T.C.A. §33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988.